Air Force Materiel Command

Developing, Fielding, and Sustaining America's Aerospace Force

Contractor Employees in the Federal Work Place

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U.S. AIR FORCE

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Overview

- Contractors in the Workplace
- Contractor Ethics “Rules”
- Risk of Unlawful Personal Services Contracts
- Tasking to Field
- Issues
- Keys to Resolving Issues
- Way Ahead
- Discussion

Contractors in the Workplace

- They're Everywhere!
  - Always have been
  - But even more so now
- They're Different!
  - Different rules for different folks (military/civilian/contractor)
  - Diversity does not mean adversity!
- Need to recognize that their presence in the workplace creates issues

Contractor Ethics Rules

- **Generally, conflict of interest (COI) laws and Standards of Ethical Conduct, including JER, do not apply to contractor employees, even when:**
  - **Performing the same/similar work**
  - **Working side-by-side in the federal workplace, contractor workplace, or on the battlefield**
- **Different loyalties**
- **Result?**
  - **Ethical issues and actual/apparent COIs**

Contractor Ethics “Rules”

- Certain COI laws (e.g. bribery)
- False statements/false claims laws
- Procurement Integrity Act
- Federal Acquisition Regulation (FAR)
  - (3.104) Procurement Integrity
  - (3.2) Contractor gratuities to govt personnel
  - (9.1) Responsible contractors
  - (9.4) Debarment/suspension
  - (9.5) Organizational and Consultant COI
  - (37.104) Personal Services Contracts

Risk of Unlawful Personal Services Contracts

- Appearance of employer/employee relationship
- Prohibited unless authorized specifically by statue
  - Subverts civil service laws and OPM regulations

Contractor Personnel Cannot:

- Be placed in a position where they are under supervision, direction, or evaluation of a govt employee
- Be placed in a position of command, supervision, administration, or control over govt personnel, or over personnel of other contractors; or become part of the govt organization

Tasking to Field

- On 28 Oct 03, HQ AFMC/PK requested field offices to provide information on support contractor participation in organizational activities
  - Formal/Informal Policies
  - Memorandums
  - Legal Opinions
- Information collected will be used to draft a set of guidelines addressing participation of support contractors in organizational activities

Issues

- Identity – Who is a contractor?
- Information security
- Gifts
- Use of Government Resources
- Conflicts of Interest
- Appearances of Conflict
- Personal Services
- Relationships
- Awards
- Time Management
- Interference with Contractor's
  - Performance of Contract
  - Employer-Employee Relationship
  - Conduct of Business

Key to Resolving Issues

- Contractor employees are not federal employees
  - Different loyalties/different rules apply
- Relationship is with the contractor, not with contractor employees
  - We do not supervise employees
  - We do not approve absences of the contractor's employees
  - We are not responsible for contractor's employee training, off-site activities, performance appraisals, awards and other recognition
- Relationship is defined by the contract
  - Specifies services contractor is supposed to perform, terms on how fast, where and in what format
  - Specifies what equipment, supplies, service, training, etc. we are supposed to provide contractor
- Avoid paying twice
  - Contractor is supposed to recruit, establish, train and maintain a workforce (employer-employee relationship)
  - The contract price includes what it includes…nothing more, nothing less

Way Ahead

- **HQ AFMC PK/FM/JA currently developing a set of guidelines to address contractors in the workplace**
  - **Will identify common ‘pitfalls’ frequently seen in the workplace (i.e. awards, time-off, gifts, etc.)**
  - **Will identify certain areas (i.e. personal services, proper expenditure of funds, etc.) that need to be considered in order for a CO to make an informed decision**

Discussion

Questions?